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No. 397

In the Supreme Court of the United States

OCTOBER TERM, 1939

UNITED STATES OF AMERICA, PETITIONER

v.

THE BORDEN COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION BY THE UNITED STATES TO ADVANCE

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The Solicitor General, pursuant to Rule 20, paragraphs 3 and 4, of this Court, moves to advance the above-entitled cause for hearing at the earliest date convenient to the Court.

This appeal was taken under the Criminal Appeals Act, and under Section 238, paragraph 2, of the Judicial Code, as amended by the Act of February 13, 1925, from the judgment of the District Court sustaining demurrers and motions to quash interposed by the defendants to the indictment.

The indictment was based upon the Sherman Antitrust Act and consisted of four counts. The District Court determined that no indictment

would lie under Section 1 of the Sherman Act as to certain defendants on the ground that the production and marketing of agricultural products, including milk, have been removed from the purview of the Sherman Act by the Agricultural Adjustment Act, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937. The District Court further determined that no indictment would lie under Section 1 of the Sherman Act as to the Pure Milk Association, an agricultural cooperative organization, its officers and agents, with respect to the production and marketing of agricultural products, including milk, because Section 6 of the Clayton Act, Sections 1 and 2 of the Capper-Volstead Act, and the Agricultural Adjustment Act, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, when properly construed exempt the Pure Milk Association, together with its officers and agents, from prosecution under Section 1 of the Sherman Act. This decision involves a construction of the Sherman Act insofar as it applies to combinations and conspiracies in restraint of interstate trade and commerce in agricultural products, including milk.

The question as to the application of the Sherman Act to the production and marketing of agricultural commodities is one of great public interest. The confusion resulting from the unsettled state of the law is materially interfering with the enforce-

ment of the antitrust laws. It is manifestly important that a decision should be rendered promptly, and that the case should not be obliged to await its regular call on the docket.

For these reasons, and as the Criminal Appeals Act directs that appeals thereunder "shall be diligently prosecuted and shall have precedence over all other cases," this motion to advance is respectfully submitted.

Notice of this motion has been served on counsel for the appellees, and proof of service filed with the clerk of this Court.

ROBERT H. JACKSON,
Solicitor General.

OCTOBER 1939.